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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/581,249	04/13/2007	Tapani Orha	2747-6	1795
23117 7590 03/11/2009 NIXON & VANDERHYE, PC 901 NORTH GLEBE ROAD, 11TH FLOOR ARLINGTON, VA 22203				
EXAMINER				
RAMDHIANE, BOBBY				
ART UNIT		PAPER NUMBER		
1797				
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

**Application No.**

10/581,249

**Applicant(s)**

ORHA ET AL.

**Examiner**

BOBBY RAMDHANIE

**Art Unit**

1797

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 14 January 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 11-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 11-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SE/US)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments with respect to claims 11-22 have been considered but are moot in view of the new ground(s) of rejection. The new grounds of rejection are necessitated by Applicants amendments to the claims.
2. Applicant's arguments filed 12/05/ have been fully considered but they are not persuasive. The Following reason is why: Applicants argue that the lug element 32 is not elastic which does not have a lateral edge joined to at least one side wall. The Examiner respectfully disagrees.
3. The lugs have a lateral edge joined to at least one side wall. The opening in Figure 2, defines four walls and the flexible support wall are attached to each other via the circumference, which means that the support walls has a lateral edge which is joined to at least one side wall.
4. Applicants further allege that the lug does not have elasticity. The Examiner again, respectfully disagrees. Quackenbush discloses that the lugs are "resilient and they press any articles inserted through the holes." The Examiner interprets the properties of the lug, namely to be resilient and to be able to press articles inserted through the holes, to be a degree of elasticity. Applicants' specification does not have a definition of this term of degree, except the following extremely broad statement,

"The support wall 13 preferably has suitable elasticity for the well 3 to be fixed into the orifice 2 with adequate friction, yet for the well to be readily removable. The

elasticity of the support wall is achieved by selecting a suitable material and wall thickness (Please See Page 4 lines 25-29)."

***Response to Amendment***

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

7. Claims 11-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Quackenbush (US3390783).

8. Applicants' claims are toward a device.

9. Regarding Claims 11-17, Quackenbush discloses the tray for sample vessels, comprising: A). An upper surface with a plurality of orifices arranged in matrix configuration (See figure 2 Item 8), wherein each of the orifices accommodates one sample vessel (See Figures 2 & 3) and, each orifice comprises two straight planar positioning walls which define a positioning corner (See Figure 2, orifice, there are two

walls which define positioning walls where the tip of the triangle meet & Column 3 lines 1-5), and B). Wherein the orifices include a planar flexible support wall positioned opposite the positioning corner (See Figures 2 & 3 Items 8 & 32), the flexible support wall having an upper edge, two lateral edges and a lower edge, the upper surface of the tray joining the upper edge of the support wall, wherein the flexible support wall of the orifices elastically presses a sample vessel inserted into the orifice towards the positioning corner, and wherein the orifices have at least one planar side wall joining a lateral edge of a respective flexible support wall to a lateral edge of a respective one of the positioning walls (See Figures 2 & 3 Item 31 & Column 3 lines 2-5 & 35-37). Quackenbush however, does not disclose that the positioning corner is a right angle.

10. Quackenbush does however disclose that the holes are triangular in shape. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the angle of the positioning wall to be a right angle, as a design choice depending on the shape of the tube to be held in the tray.

11. Additional Disclosures Included: Claim 12: Each orifice is provided with a separate support wall (See Figure 2 Item 32); Claim 13: The positioning walls, the at least one side wall and the flexible support wall of each orifice encircle the orifice peripherally (See Figure 2 the walls as shown encircle the periphery of Item 28); Claim 14: The flexible support wall is inclined towards the centre of the orifice (See Figures 2 & 3 Item 32); Claim 15: Wherein orifices at an outer edge of the matrix include outwardly directed positioning walls (See Figure 2); Claim 16: The outwardly directed positioning walls of the orifices located at the edge join each other, forming a continuous

periphery around the matrix (See Figure 2 Item 30 and 8; Item 30 is a portion of Item 8 which extends continuously around the periphery); Claim 17: The orifices are disposed in arrays of five orifices (an array of five orifices includes an array of four orifices), starting from the corner of the matrix, and wherein the flexible support walls of the orifices are located at a centre of the array (See Figure 2 flexible support walls of the orifices exist at the center of the array).

12. Claims 11-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Leoncavallo et al (US5080232).

13. Applicants' claims are toward a device.

14. Regarding Claims 11-22, Leoncavallo et al discloses the tray for sample vessels, comprising: A). An upper surface with a plurality of orifices arranged in matrix configuration (See figure 2 Item 22) wherein each of the orifices accommodates one sample vessel (See Figure 2).

15. Leoncavallo et al does not disclose that each orifice comprises two straight planar positioning walls which define a positioning corner and B). Wherein the orifices include a planar flexible support wall positioned opposite the positioning corner, the flexible support wall having an upper edge, two lateral edges and a lower edge, the upper surface of the tray joining the upper edge of the support wall, wherein the flexible support wall of the orifices elastically presses a sample vessel inserted into the orifice towards the positioning corner, and wherein the orifices have at least one planar side wall joining a lateral edge of a respective flexible support wall to a lateral edge of a respective one of the positioning walls, or that the positioning corner is a right angle.

16. Leoncavallo et al does however, disclose that the openings may have any shape desired (The Examiner interprets this section to give teaching, suggestion, and motivation to change the shape to be any shape including squares which include positioning walls which have planar support and lateral walls that are positioned at right angles). Leoncavallo et al does disclose a flexible support wall having an upper edge in relation to a circular shaped orifice (See Figure 2 Item 34), wherein the flexible support wall of the orifices elastically presses a sample vessel inserted into the orifice, and the orifices have at least one side wall joining a lateral edge of a respective flexible support wall to a lateral edge of a respective one of the positioning walls (See Figure 2). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the circular shape of the orifice to be a square, which would have the planar positioning walls and lateral walls, angled at right angles, since Leoncavallo et al discloses that the orifices may be of any shape desired (See Column 2 line 65 to Column 3 line 3).

17. Additional Disclosures Included: Claim 12: Each orifice is provided with a separate support wall (See Figure 2); Claim 13: The positioning walls, the at least one side wall and the flexible support wall of each orifice encircle the orifice peripherally (See Figure 2, when the shape is changed to a square, this limitation is observed); Claim 14: The flexible support wall is inclined towards the centre of the orifice (See Figure 2 Item 34, the flexible support wall is capable of being used in this manner); Claim 17: The orifices are disposed in arrays of four orifices, starting from the corner of the matrix (See Figure 2, the array has an array of six orifices, which includes four

orifices), wherein the flexible support walls of the orifices are located at a center of the array (See Figure 2, the flexible support walls of some of the orifices are located at a center of the arrays); Claim 18: A tray for sample vessels comprising: A). Multiple square orifice arrays comprised of four orifices (See Figure 2 in relation to rejection of Claim 11), wherein each of the orifices in the orifice arrays is defined by a pair of planar positioning walls joined to one another along an edge thereof to define a positioning corner, and wherein the orifice arrays include a pushing means positioned centrally in the orifice array for elastically pushing a sample vessel inserted into an orifice in a direction toward a respective one of the positioning corners, wherein the pushing means includes planar elastic support walls each positioned in opposition to a positioning corner of a respective orifice (See Figure 2, the flexible support walls of some of the orifices are located at a center of the arrays).

18. Additional Disclosures Included: Claim 19: A tray as in claim 18, wherein each of the orifices includes at least one planar side wall having lateral edges which join a respective one of the positioning walls to the support wall thereof (See rejection to Claim 11); Claim 20: Each of the orifices includes a pair of side walls, each of the side walls having lateral edges joining respective ones of the positioning walls to the support wall thereof (See Rejection of Claim 11); Claim 21: Wherein respective positioning walls, side walls and a supporting wall are joined to one another so as to define a periphery of each orifice in the orifice array (See Figure 2 in view of rejection to Claim 11); and Claim 22: Wherein the at least one side wall has an inwardly bent free edge which defines the support wall (See Figure 2 Item 34).



19. Regarding Claim 15, Leoncavallo et al discloses the tray as defined in Claim 11, except wherein the orifices at an outer edge of the matrix include outwardly directed positioning walls. Leoncavallo et al does however disclose that the orifices at an outer edge of the matrix include inwardly directed positioning walls. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the positioning walls to be outwardly directed as a design choice since Leoncavallo et al discloses that this configuration is only a preferred embodiment and that it has been held that a mere reversal of the essential working parts of a device involves only routine skill in the art. *In re Einstein*, 8 USPQ 167.

20. Additional Disclosures Included: Claim 16: A tray as defined in claim 15, in which the outwardly directed positioning walls of the orifices located at the edge join each other, forming a continuous periphery around the matrix (See Figure 2).

### ***Telephonic Inquiries***

21. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to BOBBY RAMDHANIE whose telephone number is (571)270-3240. The examiner can normally be reached on Mon-Fri 8-5 (Alt Fri off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Walter Griffin can be reached on 571-272-1447. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Walter D. Griffin/  
Supervisory Patent Examiner,  
Art Unit 1797

/B. R./